IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Rev. No. 75 of 2001

Date of decision: 13.7.2007

Kulbir Singh **Petitioner**

Versus

State of H.P. **Respondent**

Coram

The Hon'ble Mr. Justice Deepak Gupta, Judge.

Whether approved for reporting?[1]

For the Petitioner: Mr. Ravinder Thakur, Advocate

For the Respondent :Mr. R.M.Bisht, Deputy Advocate General.

Deepak Gupta, J.

This revision petition is directed against the order of the learned Sessions Judge, Solan in Criminal Appeal No. 11-S/10 of 1999, decided on 31.3.2001 whereby he has affirmed the judgment of the Judicial Magistrate Ist Class, Solan dated 26.4.1999 in case No. 260/2 of 1995/94 convicting the petitioner of having committed offences punishable under Sections 279/304-A IPC. It would be, however, pertinent to mention that the appellate court has held that since the petitioner has been convicted under Section 304-A IPC, his conviction under

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[1] ***Whether the reporters of the local papers may be allowed to see the Judgment?***

Section 279 IPC is set aside because it is an offence of a lesser degree.

The admitted facts of the case are that deceased Rattan Chand alongwith Sanjeev Kumar was travelling on scooter No. HR-03-4619. They had picked up a gas cylinder from the godown at Sector 4, Parwanoo and were returning to Pinjore. It is also admitted that they were going down-hill. At about 3.30 p.m. the scooter had just crossed the railway crossing at Taksal. A bus bearing No. CH-01B-7527 being driven by the petitioner came from the other side and hit the scooter. Rattan Chand sustained injuries and was taken to the hospital at Parwanoo. He was thereafter shifted to Chandigarh, but died on account of injuries sustained by him. The challan was filed against the accused under Section 279 and 304-A IPC. He pleaded not guilty and claimed trial. Evidence was recorded and on conclusion of the evidence, the petitioner was convicted for both the offences.

The petitioner filed an appeal. A perusal of the judgment of the appellate court shows that the judgment is based on total generalization and there is no reference to the specific evidence led in the case. Therefore, even

though this is a revision petition, I have gone through the entire evidence myself. From the evidence on record, it is clear that a collision did take place. Who is at fault, is the main question to be decided. Despite the fact that the accident admittedly took place in the afternoon in an area where there were a large number of persons, no statement of any independent witness has been recorded and the only eye witness examined is PW-3, Sanjeev Kumar, son of the deceased.

According to Sanjeev Kumar, his father was driving the scooter and he was sitting behind his father carrying a cylinder. He admits that they had just crossed the railway crossing and just beyond the railway crossing there was a speed breaker. According to him the offending bus belonging to the Eicher came at a fairly high speed and the front portion of the bus hit the scooter. The scooter fell down and his father sustained injuries. He further states that the scooter was being driven on its correct side and was at a low speed. In cross examination the case put to the witness is that in fact it was this witness, Sanjeev Kumar, who was driving the scooter and his father was sitting behind, carrying the cylinder. It is also alleged that since they were crossing the speed

breaker, they lost balance because the cylinder fell and the scooter hit the bus. A perusal of the statement of the witness shows that other than making a bare assertion that the bus driver was driving the bus at a fairly high speed, no other allegation of the bus being driven rashly or negligently has been made. This witness admits that his father was taken to hospital at Parwanoo in the bus in question. The photographs which have been placed on record clearly show that the bus was on the left side of the road and only the extreme right portion of the bus has been damaged which collided with the scooter. The site plan, Ex.PW-9/A prepared by the investigating officer also reveals that the Pakka portion of the road was only 12 feet and the bus was on its correct side. As noted above, no other independent witness has been examined even though both sides admit that a number of people had collected on the spot and had also witnessed the accident. The petitioner has in fact examined a defence witness who was admittedly travelling with him in the bus and this witness has supported the version of the petitioner that the accident occurred when the scooter driver lost balance while crossing the speed breaker since a cylinder was being carried on the scooter. It

cannot be said that this version of the petitioner is improbable. There is doubt with regard to the manner in which the accident took place. The benefit of the doubt has to go to the petitioner.

In view of the above discussion the petition is accepted, the judgments recorded by both the courts below are set aside and the conviction and sentence imposed upon the petitioner are set aside. The bail bonds of the petitioner are discharged.

July 13, 2007(K) (Deepak Gupta), J.